

EXHIBIT 34

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

REBOTIX REPAIR, LLC

Plaintiff,

vs.

Case No. 8:20-CV-02274

INTUITIVE SURGICAL, INC.,

Defendant.

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REMOTELY CONDUCTED

VIDEOTAPED DEPOSITION OF KATIE SCOVILLE

Redwood City, California (Witness's location)

Wednesday, May 26, 2021

Stenographically reported by:

LORRIE L. MARCHANT, RMR, CRR, CCRR, CRC

California CSR No. 10523

Washington CSR No. 3318

Oregon CSR No. 19-0458

Texas CSR No. 11318

Job No. 194223

1 A. Intuitive's sales force and their ability
2 to train on a product, sustain the product, educate
3 the customers on it, et cetera.

4 Q. One of your roles was to make sure that
5 Intuitive's sales force accepted the product and was
6 satisfied with the product and was confident that
7 they could sell the product?

8 A. It was -- for Project Dragon it was my
9 responsibility to assess that. While we never
10 launched it, I had to think about that as well in
11 the same way I thought about it for the customer.

12 Q. I want to walk through your various roles.
13 Did -- withdrawn.

14 In evaluating the demand for refurbished
15 EndoWrists, did you ultimately conclude that there
16 was a demand among hospitals for refurbished
17 EndoWrists?

18 A. To my recollection, we concluded that there
19 was a demand for a lower cost solution for our
20 hospitals, a lower price per procedure.

21 Q. And one way to achieve that lower price per
22 procedure was through refurbished EndoWrists; right?

23 A. And Project Dragon was exploring if
24 refurbishment was one way to achieve that.

25 Q. Did Project Dragon reach -- withdrawn.

1 Were any conclusions made over the course
2 of Project Dragon whether there would be demand for
3 lower-priced refurbished EndoWrists?

4 A. We believed we could identify a small
5 number of pilot sites to test and validate the
6 demand.

7 Q. And did you go ahead and proceed with the
8 pilot sites?

9 A. We never launched a pilot, no.

10 Q. Did you have an expectation that there
11 would be a demand for lower-priced refurbished
12 EndoWrists?

13 A. I believe that question was previously
14 asked.

15 Q. I'm sorry. I don't recall the response.
16 I'm just asking it again, if I did. I'll reask the
17 question.

18 Did you have an expectation that there
19 would be a demand for a lower-priced, refurbished
20 EndoWrist?

21 A. I believed there was a demand for a lower
22 price per procedure --

23 (Simultaneous speakers - unclear.)

24 THE WITNESS: -- customer demand.

25 ///

1 BY MR. LYON:

2 Q. I'm sorry. My question was slightly
3 different. Did you -- withdrawn.

4 Did you believe that there would be demand
5 for a lower-priced, refurbished EndoWrist?

6 A. To my recollection, I believe that there
7 would be a demand for a lower-priced, refurbished
8 instrument at a certain discount.

9 Q. One of your other roles, I believe you
10 said, on Project Dragon was customer satisfaction;
11 is that right?

12 A. Assessing customer satisfaction, yes.

13 Q. Determining whether or not customers would
14 be willing to accept and satisfied by using
15 refurbished EndoWrists; is that right?

16 A. Yes.

17 Q. In the course of assessing whether
18 hospitals would be satisfied with refurbished
19 EndoWrists, did you form any conclusions?

20 MR. RUBY: I'll object to the form of the
21 question which incorporates customers being
22 satisfied, which hasn't been established. There's
23 no foundation. I'll object to the form on that
24 basis.

25 But you may go ahead and answer.

1 THE WITNESS: So for the stage of the
2 project that we were in, we did an initial
3 assessment of if a subset of customers could be
4 satisfied with refurbished devices. My recollection
5 is that we concluded they could be satisfied with
6 certain performance and certain discounts.

7 BY MR. LYON:

8 Q. To the best of your recollection --
9 withdrawn.

10 You concluded that certain customers would
11 be satisfied with refurbished EndoWrists so long as
12 they performed sufficiently well and were
13 sufficiently priced; is that fair?

14 A. Correct. Though if we need to dig into
15 what "sufficiently" means, please let me know.

16 Q. I'm going to ask you to turn to the seventh
17 page of the presentation.

18 MR. RUBY: Could you give me the Bates
19 numbers on that, please?

20 MR. LYON: Sure. It's 423540.

21 MR. RUBY: Thank you.

22 BY MR. LYON:

23 Q. At the top there is a header,
24 "Assumptions."

25 Do you see that?

1 A. I do.

2 Q. The first bullet point there says, "dV
3 procedure cost at specific hospitals (regions) is a
4 market barrier to increased adoption."

5 Do you see that?

6 A. I do.

7 Q. Does dV there refer to da Vinci?

8 A. Yes.

9 Q. Is it the case that certain da Vinci
10 procedures cost more than the analogous procedure
11 done without a surgical robot?

12 A. Can you restate your question?

13 Q. Sure. Do certain medical procedures cost
14 more if they are implemented with a da Vinci
15 surgical robot than if they are done in the
16 traditional fashion without a surgical robot?

17 A. Can you clarify if you'd like me to comment
18 on direct cost versus total cost of treatment?

19 Q. That's a good question. Let's start with
20 direct cost. So I'll reask the question.

21 In terms of direct cost, do procedures cost
22 more when they are performed with a da Vinci
23 surgical robot than if they are performed with
24 traditional nonrobotic surgery?

25 A. It is my recollection that, for certain

1 instruments. It would refer to our core -- a subset
2 of our instrument portfolio.

3 Q. The core most commonly used EndoWrists?

4 A. Correct.

5 Q. Under "Company Focused," there's the header
6 "Offensive" and "Defensive." Do you see that?

7 A. I do.

8 Q. Under "Offensive" it states, "Create lower
9 pricing options while maintaining acceptable
10 margins."

11 Do you see that?

12 A. I do.

13 Q. Was it one of your goals with the EndoWrist
14 refurbishment program to create lower pricing
15 options while maintaining acceptable margins?

16 A. Yes.

17 Q. Did you perform any sort of analysis to
18 determine what sort of margins would be deemed
19 acceptable?

20 A. No.

21 Q. Did others at Intuitive perform any
22 analysis to determine what sort of margins would be
23 deemed acceptable?

24 A. Not to my knowledge -- or not to my --
25 pardon me -- my recollection. We focused on what

1 would the margins be versus what was the acceptable
2 margin.

3 Q. Were any conclusions made as to what the
4 margins would be?

5 A. I believe we forecasted that, yes.

6 Q. To the best of your recollection, what did
7 you forecast the margins to be on refurbished
8 EndoWrists?

9 A. I don't recall the specifics.

10 Q. Under "Defensive" -- withdrawn.
11 Under "Defensive" the slide indicates,
12 "Displace nonvalidated third-party reprogrammers
13 where already present."

14 Do you see that?

15 A. I do.

16 Q. Was one of the goals of Intuitive's
17 EndoWrist refurbishment program to displace
18 nonvalidated third-party reprogrammers where already
19 present?

20 A. Based on this slide, yes.

21 Q. And this slide, do you have any reason to
22 disagree with that statement?

23 A. No. No.

24 Q. It's possible you created this slide;
25 correct?

1 A. Yes. It's just a long time ago.

2 Q. What do you mean by "nonvalidated
3 third-party reprogrammers"?

4 A. So I'll take that in two chunks.

5 So we have plenty of validated third-party
6 products that we will validate for use with our
7 system. So by nonvalidated, that's acknowledging
8 that we at this time had not validated a third party
9 that could use reprogrammed or remanufactured
10 devices on our system with our kind of testing and
11 approval.

12 Q. This statement is referring specifically to
13 EndoWrists; correct?

14 A. Correct.

15 Q. And Intuitive has never validated a third
16 party to refurbish EndoWrists; correct?

17 A. Correct.

18 Q. The slide also states, "Reclamation removes
19 product from field increase entry barriers for other
20 third-party reprogrammers."

21 Do you see that?

22 A. I do.

23 Q. Was one of the goals of Intuitive's
24 EndoWrist refurbishment program to increase entry
25 barriers for third-party reprogrammers?

1 A. Yes.

2 Q. How would you characterize your current
3 role?

4 A. It's an engineering leadership position.

5 Q. When did you come to switch from marketing
6 to engineering leadership? That strikes me as an
7 odd transition. Maybe I'm wrong.

8 A. Well, I have my master's in electrical
9 engineering. So if you've got time, I can give you
10 the 20-year history.

11 Q. That will do it.

12 I want you to turn to the next page,
13 page 12 of the PDF, the page bearing Bates Numbers
14 Intuitive-103439, "Feasibility Work Completed."

15 Do you see that?

16 A. I do.

17 Q. Is it your understanding that this slide is
18 referring to technical feasibility or economic
19 feasibility?

20 A. Technical feasibility.

21 Q. And RNA units, I believe we discussed
22 earlier, are certain EndoWrists that are returned
23 either because they were defective or just because
24 there was excess inventory. Is that correct?

25 A. Correct.

1 Q. This slide indicates that "Completed
2 clinical assessment on remanufactured RMA units."

3 Do you see that?

4 A. It does.

5 Q. It further states that it confirmed
6 clinical utility was equivalent or better than new
7 instruments.

8 Do you see that?

9 A. I do see that.

10 Q. Did clinical assessment of certain
11 EndoWrists confirm that their clinical utility was
12 equivalent or better than new instruments after they
13 had been refurbished?

14 A. Based on this slide, yes.

15 Q. Based on your recollection as well?

16 A. I truly do not recall that we would have
17 ever assessed them as better, but I do recall that
18 we were trying to meet equivalent and that we had
19 that technical feasibility completed.

20 Q. When you prepared these slides and
21 delivered this presentation, you were careful to
22 make sure they were accurate; correct?

23 A. Yes.

24 Q. Your memory and knowledge of the clinical
25 utility would have been better at the time you

1 prepared this slide than sitting here today;

2 correct?

3 A. Yes. Although I do think --

4 (Stenographer interrupted for clarification
5 of the record.)

6 THE WITNESS: Yes, though I do believe
7 Nicky prepared this slide.

8 BY MR. LYON:

9 Q. Intuitive has confirmed that the --
10 withdrawn.

11 What is meant by "clinical utility"?

12 A. Based on some of the articles we reviewed
13 previously, I think I would draw the parallel back
14 to -- we talked about grip, range of motion. There
15 was another one that came up in a previous document.
16 So we would have looked at certain performance
17 attributes that were critical to clinical function.

18 Q. Grip, range of motion, sharpness of blades
19 and scissors?

20 A. Yes.

21 Q. Intuitive confirmed that the grip, the
22 range of motion, the sharpness of blades or scissors
23 of refurbished products can be equivalent or better
24 than the original EndoWrists in certain instances;
25 correct?

1 addition to the use of the word "reprogrammed."

2 BY MR. LYON:

3 Q. Your FAQ lists examples of the impact that
4 can be caused by EndoWrists that hospitals have
5 received back from Rebotix. And there's four
6 bullets there.

7 Do you see that?

8 A. I see the bullets. I don't see the use of
9 Rebotix explicitly.

10 Q. Oh. The document doesn't reference
11 Rebotix; correct? But it's --

12 A. Not that I --

13 Q. It's my understanding that these FAQs and
14 what it refers to as unauthorized reprogrammed
15 instruments refers to instruments that have been
16 provided back to hospitals from Rebotix.

17 Is that your understanding as well?

18 A. Or others, yes.

19 Q. Examples of the impact that this FAQ
20 attributes to Rebotix's role for services on
21 EndoWrists includes four bullets, including
22 "unintuitive motion, insufficient grip force, dull
23 or damaged scissor blades, worn or damaged cables."

24 Is that accurate?

25 MR. RUBY: I'll object to the form of the

1 preamble to the question. The actual question
2 itself, I don't object to. But I object to the part
3 that came before.

4 But you may answer.

5 THE WITNESS: Yes, I see those four bullets
6 listed here.

7 BY MR. LYON:

8 Q. Do you have an understanding that
9 EndoWrists that have been serviced by Rebotix to
10 include lives beyond the original limit imposed by
11 Intuitive have exhibited unintuitive motion?

12 A. I do not recall any of the details of the
13 devices -- device performance specific to Rebotix.

14 No, I guess, is the answer to your
15 question.

16 Q. Do you -- withdrawn.

17 Are you aware of any examples where an
18 instrument from -- withdrawn.

19 Are you aware of any examples where an
20 EndoWrist from Rebotix has exhibited insufficient
21 grip force?

22 A. I'm not aware of the device performance of
23 Rebotix devices.

24 Q. Are you aware of any instances where an
25 EndoWrist from Rebotix has exhibited dull or damaged

1 scissor blades?

2 A. I cannot recall any of the specifics of
3 Rebotix performance issues that have been reported
4 to Intuitive.

5 Q. Are you aware of any EndoWrists serviced by
6 Rebotix that have worn or damaged cables?

7 A. I am not aware of any of the performance
8 issues associated with Rebotix having been reported
9 or returned to Intuitive.

10 Q. You are aware that EndoWrists that have
11 never been serviced by Rebotix and have not yet --
12 withdrawn.

13 You are aware of EndoWrists that have not
14 yet reached their maximum usage counts and have
15 never been serviced by Rebotix and yet do display
16 unintuitive motion; correct?

17 A. I am aware that that is a possible reported
18 symptom of devices before they reach their end of
19 authorized use. I cannot recall -- it's not my
20 purview to be involved in the specific instances of
21 all of those reported issues.

22 Q. You don't know the specifics of the
23 instances, but you know that there are reported
24 issues of unintuitive motion in EndoWrists before
25 they reach their designated maximum usage count;

1 correct?

2 A. That's my understanding, yes.

3 Q. You also have an understanding that there
4 are EndoWrists that are returned to Intuitive
5 because they display insufficient grip force before
6 they reach their maximum life designation; correct?

7 A. That is my understanding.

8 Q. You also have a -- withdrawn.

9 You also have an understanding that certain
10 EndoWrists are rejected or returned to Intuitive
11 because they have dull or damaged scissor blades
12 before they reach their maximum life or usage count;
13 correct?

14 A. That's my understanding, yes.

15 Q. That's also true for EndoWrists that have
16 worn or damaged cables; right?

17 A. That is also possible is my understanding,
18 yes.

19 MR. LYON: I have placed in the submitted
20 folder and the chat another document, and I would
21 like to mark -- excuse me. Withdrawn.

22 I'd like to mark as Exhibit 13 a PowerPoint
23 presentation from March 25th, 2020, entitled "Core
24 Life Extension Steering Committee Update," bearing
25 Bates labels Intuitive-00056780 through 556815.